

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Aloys Wobben
Application No. : 10/553,429
Filed : August 7, 2006
For : METHOD OF OPERATING A WIND POWER STATION

Examiner : Julio C. Gonzalez
Art Unit : 2839
Patent No. : 7,619,321
Issued : November 17, 2009
Docket No. : 970054.494USPC
Date : January 19, 2010

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents:

Applicants hereby request reconsideration of the patent term adjustment under 35 U.S.C. § 154(b) indicated on Patent No. 7,619,321 issued by the U.S. Patent and Trademark Office (PTO) on November 17, 2009. As required under 37 C.F.R. § 1.705(b)(1), enclosed is authorization for payment of \$200 in accordance with 37 C.F.R. § 1.18(e).

Because this Request for Reconsideration of Patent Term Adjustment depends on calculations based on the issue date of the patent, this Request relates to an issue that could not have been raised prior to issuance of the patent. Therefore, this Request is timely filed within two months of the issue date (November 17, 2009) of U.S. Patent No. 7,619,321, in accordance with 37 C.F.R. § 1.705(d).

Statement of Facts (37 C.F.R. § 1.705(b)(2)):

The adjustment of patent term under 35 U.S.C. 154(b) that is indicated in U.S. Patent No. 7,619,321 is 264 days. As discussed in detail below, Applicants respectfully submit that this adjustment is incorrect and request an addition of 395 days to the patent term of U.S. Patent No. 7,621,049. Accordingly, the correct adjustment of patent term under 35 U.S.C. 154(b) is 659 days.

(i) Applicants submit that the patent term adjustment for delay by the U.S. Patent and Trademark Office (PTO) under 37 C.F.R. § 1.702(a) is 295 days and for delay by the PTO under 37 C.F.R. § 1.702(b) is 395 days. Applicants submit that the correct sum of the delays by the PTO is 690 days and reduced by 31 days of Applicants delay under 37 C.F.R. § 1.704(b),. The adjustment of patent term under 35 U.S.C. 154(b) is 659 days (690 days of PTO delay reduced by 31 days of Applicants delay).

(ii) Delays by the PTO under 37 C.F.R. § 1.702(a) equal 295 days. The above-identified patent was filed under 35 U.S.C. 371 and has a filing date of October 18, 2005. A delay of 295 days is accorded under 37 C.F.R. § 1.702(a)(1) with respect to issuance of a Restriction Requirement on July 28, 2008.

Applicants submit that the delay by the PTO under 37 C.F.R. § 1.702(b) is not zero (0) days as indicated in Patent Application Information Retrieval (PAIR) but is 395 days. The filing date under 35 U.S.C. § 371 was October 18, 2005. Three years after this date was October 18, 2008; however, the patent issued on November 17, 2009. In accordance with 37 C.F.R. § 1.702(b), issuance of the patent has been delayed by the PTO by 395 days after the date that is three years after the date on which the application was filed under 35 U.S.C. § 371 (*see also* 37 C.F.R. § 1.703(b)).

Under 35 U.S.C. § 154(b)(2)(A), to the extent that periods of delay attributable under 35 U.S.C. § 154(b)(1) overlap, the period of adjustment shall not exceed the number of days that issuance of the patent was delayed. Since the first action (Restriction Requirement)

was mailed on July 28, 2008, eighty-two days before the start of the three year date on October 18, 2008, no portion of the 295 days of delay by the PTO under 37 C.F.R. § 1.702(a)(1) overlaps with the greater than three year period. Therefore, a delay of 295 days does not overlap with delay by the PTO under 37 C.F.R. § 1.702(b) between October 18, 2008 and November 17, 2009 (*see Wyeth and Elan Pharma Intn'l Ltd. V. Kappos*, 2009-1120 (Fed. Cir. 2010), and *Wyeth v. Dudas*, 88 U.S.P.Q.2d 1538, 1541 (D.D.C. 2008)).

Applicants submit that, in total, the delay by the PTO under 35 U.S.C. § 154(b) and 37 C.F.R. § 1.702 equals 690 days (295 days + 395 days).

(iii) This patent is not subject to any terminal disclaimer.

(iv) Pursuant to 37 C.F.R. § 1.704(b), the period of adjustment of patent term is decreased by 31 days due to delays by Applicant. As indicated in PAIR, an Office Action was issued on October 20, 2008. Applicant filed a response to the Office Action on February 20, 2009 (a delay of 31 days). The Applicants' delays under 37 C.F.R. § 1.704(b) thus equal 31 days and reduce the total delay of 690 days by the PTO.


Accordingly, the adjustment of patent term under 35 U.S.C. 154(b) is 659 days (690 days of PTO delay reduced by 31 days of Applicants delay).

Summary

In view of the foregoing, Applicants respectfully request an addition of 395 days.
Applicants are thus entitled to a patent term adjustment of 659 days.

The Director is authorized to charge any additional fees due by way of this
Application, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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